STATE OF MICHIGAN

COURT OF APPEALS

JAMES JAIKINS AND LINDA JAIKINS,

Plaintiffs-Appellants,

v

ROSE TOWNSHIP,

Defendant-Appellee,

and

SUSAN SLAUGHTER,

Defendant.

UNPUBLISHED
May 4, 2006

No. 264695
Oakland Circuit Court
LC No. 2001-033837-AS

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

In this case[1] involving the Land Division Act (LDA), plaintiffs appeal as of right from an order granting partial summary disposition in favor of defendant Rose Township ("defendant").[2] We affirm.

[1] Plaintiffs were also involved in a second case against defendant. See Oakland Circuit Court Docket No. 02-041222-AA. There, plaintiffs challenged defendant's decision to impose certain conditions before approving the "as built" portion of plaintiffs' private road. Plaintiffs also argued that defendant's ordinances were preempted by the LDA. In January 2004, the trial court in that matter found that plaintiffs had failed to exhaust their remedies by failing to appeal the private-road-application decision to defendant's zoning board of appeals (ZBA). Further, the court determined that the LDA did not preempt defendant's local ordinances.

A similar proceeding was brought by Joseph Bayagich, who had purchased ten acres from plaintiffs. In August 2002, Joseph Bayagich and Robin Bayagich filed a motion to intervene as third-party plaintiffs in the present case. The trial court in the present matter denied the motion, and the Bayagichs continued with their claims in separate litigation. See *Bayagich v Jaikins*, Oakland County Circuit Court Docket No. 02-043281-AS (hereinafter "*Bayagich* litigation"). In April 2005, the trial court in the *Bayagich* litigation found that defendant township was permitted
(continued…)

Plaintiffs acquired approximately 118 acres of property at 375 Demode Road, Rose Township, Michigan. They decided to divide the property, which was zoned agricultural, into several smaller parcels. Plaintiffs began building a private roadway to provide access to these proposed resulting lots.

In November 2000, plaintiffs submitted to defendant a land division application and a private road application. Defendant's planning commission initially recommended denial of plaintiffs' private road application. However, plaintiffs received neither a final approval nor a final denial. Defendant suggested that the land division application was incomplete because plaintiffs had not complied with the requisite local land division ordinance. That ordinance requires final approval of a private road application before defendant will consider an accompanying land division application.

Plaintiffs filed a complaint seeking mandamus, alleging several constitutional violations, and contending that defendant had violated the Freedom of Information Act (FOIA) by failing to respond to certain requests for information. In September 2001, defendant's planning commission recommended preliminarily approving plaintiffs' private road application, subject to several conditions. Those conditions included: (1) execution of an easement and road maintenance agreement by all interested parties; (2) execution of deed restrictions and a conservation easement by all interested parties; (3) execution of a performance guarantee, including a deposit or surety bond to ensure completion of the private road; (4) receipt of outstanding invoices for services; and (5) provision for fire suppression in the form of a dry hydrant. In April 2002, defendant's Board passed a resolution stating that it would finalize and approve the land division only if these outstanding conditions were first met.

Plaintiffs amended their complaint to (1) add Slaughter as an individual defendant; (2) assert that defendant's imposition of conditions was unreasonable and illegitimate; (3) claim that defendant's actions constituted an unconstitutional taking; and (4) set forth a claim for tortious interference with contractual relations. The parties then filed cross-motions for summary disposition, each contending that they were entitled to judgment as a matter of law. The trial court granted defendant's motion for summary disposition with respect to all issues except the FOIA claim, on which the court granted summary disposition for plaintiffs. Plaintiffs moved for reconsideration, but the trial court denied the motion.

I

Plaintiffs first argue that they were entitled to judgment as a matter of law on their land division application. However, because plaintiffs failed to comply with defendant's ordinance by properly completing the private road application process, we disagree.

(…continued)

to impose conditions on the approval of a private road or land division application, and that plaintiffs had failed to meet those conditions.

[2] An order was also entered granting summary disposition to defendant Susan Slaughter. Because plaintiffs have not appealed this order, Slaughter is not a party to this appeal.

A. Standard of Review

We review a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). We review the record evidence in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005). The evidence is viewed in a light most favorable to the non-moving party. *Id*. Alternatively, "summary disposition pursuant to MCR 2.116(C)(4), for lack of [subject-matter] jurisdiction, is proper when a plaintiff has failed to exhaust its administrative remedies." *Rudolph Steiner School of Ann Arbor v Ann Arbor Charter Twp*, 237 Mich App 721, 730; 605 NW2d 18 (1999). We review de novo the interpretation and application of a statute, *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003), the application of an ordinance, *Gora v Ferndale*, 456 Mich 704, 711; 576 NW2d 141 (1998), and the determination whether a party has been afforded due process or denied a constitutional right, *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005).

B. Land Division Application

Land division is controlled by the LDA, MCL 560.101 *et seq*. The LDA applies to all municipalities, including townships. MCL 560.102(q). Section 109 of the LDA provides in part:

> (1) A municipality shall approve or disapprove a proposed division within 45 days after the *filing of a complete application* for the proposed division with the assessor or other municipally designated official . . . . An application is complete if it contains information necessary to ascertain whether the requirements of section 108 and this section are met. The assessor or other municipally designated official, or the county official having authority to approve or disapprove a proposed division, shall provide the person who filed the application written notice whether the application is approved or disapproved and, if disapproved, all the reasons for disapproval. A complete application for a proposed division shall be approved if, in addition to the requirements of section 108, all of the following requirements are met:
>
> (a) Each resulting parcel has an adequate and accurate legal description and is included in a tentative parcel map showing area, parcel lines, public utility easements, accessibility, and other requirements of this section and section 108. The tentative parcel map shall be a scale drawing showing the approximate dimensions of the parcels.
>
> * * *
>
> (e) Each resulting parcel is accessible.
>
> * * *

> (6) Approval of a division is not a determination that the resulting parcels comply with other ordinances or regulations. [Emphasis added.]

Thus, assuming the applicable conditions are met, a municipality "shall approve or disapprove" a land division application. MCL 560.109(1).

Townships have broad powers to enact zoning ordinances. MCL 125.271(1); *Delta Twp v Dinolfo*, 419 Mich 253, 263; 351 NW2d 831 (1984). This includes "the authority to enact ordinances pertaining to roadway standards." *Bevan v Brandon Twp*, 438 Mich 385, 399 n 14; 475 NW2d 37 (1991). Defendant has enacted a land division ordinance with the express purpose of "carrying out the provisions of the State Land Division Act." Rose Township Land Division Ordinance No. 94. That ordinance provides that "[t]he road plan of an applicant must be approved before a land division is approved." Rose Township Land Division Ordinance No. 94, § 7(c).

A township is precluded from enacting an ordinance when state law would preempt the ordinance. *City of Taylor v Detroit Edison Co*, 263 Mich App 551, 560; 689 NW2d 482 (2004), lv gtd 474 Mich 877 (2005). An ordinance is preempted when (1) the ordinance is in direct conflict with a state statutory scheme, or (2) the statutory scheme preempts the ordinance by occupying the field of regulation that the municipality seeks to enter. *Id*. at 560-561. A direct conflict exists when the ordinance prohibits an act which a statute permits, or permits an act that a statute prohibits. *Howell Twp v Rooto Corp*, 258 Mich App 470, 477; 670 NW2d 713 (2003). Because there is no such direct conflict in the present case, this type of preemption does not apply.

Nor does the LDA exhibit a legislative intent to completely occupy the field. MCL 560.109(6) specifically provides that compliance with the terms of the LDA "is not a determination that the resulting parcels comply with other ordinances or regulations." Thus, as indicated by § 109(6), the LDA explicitly contemplates local rules that are more restrictive than those contained in the LDA itself. Because the LDA does not exclusively occupy the field with respect to land division requirements, defendant was not precluded by Michigan's statutory scheme from adopting its Ordinance No. 94, which mandates stricter requirements than those provided by the LDA alone.

Plaintiffs contend that once they had complied with the requirements enumerated in the LDA itself, defendant was required to act on the land division application, irrespective of the more-restrictive local ordinance. This argument is unconvincing. As noted, the LDA explicitly contemplates the existence of additional restrictions imposed by local ordinance. MCL 560.109(6). It necessarily follows, therefore, that the LDA also contemplates enforcement of these local ordinances before land division applications are granted. As noted above, § 7(c) of defendant's Land Division Ordinance No. 94 provides that "[t]he road plan of an applicant must be approved before a land division is approved." Because plaintiffs' private road application was never formally approved by defendant, plaintiffs' land division application necessarily remained incomplete under the terms of Rose Township Land Division Ordinance No. 94. Contrary to plaintiffs' assertion, their land division application never became "complete" under the LDA because it did not comport with the procedures required by defendant's local ordinance. MCL 560.109(1); MCL 560.109(6).

Our decision on this issue is further supported by the interaction of the LDA with the driveway act, MCL 247.321 *et seq*. Before a land division application may be approved under the LDA, the proposed parcels must be "accessible." MCL 560.109(1)(e). To be "accessible," parcels must be reachable by private roads or driveways that comply with the driveway act.[3] MCL 560.102(j)(*i*) and (*ii*). The driveway act expressly provides that "[n]othing in this act shall be construed to prevent the application of the provisions of . . . any local ordinance which is more restrictive than this act." MCL 247.322. Thus, pursuant to the driveway act, plaintiffs' non-public roadway must also meet local "accessibility" requirements to comply with the LDA. We conclude that Rose Township Land Division Ordinance No. 94, requiring that "[t]he road plan of an applicant must be approved before a land division is approved," may fairly be described as an "accessibility" requirement as well as a procedural requirement.

Plaintiffs' private road application was never formally approved as required by local ordinance. Therefore, regardless of whether plaintiffs' land division application would have been complete in the absence of defendant's ordinance, plaintiffs failed to comply with the additional local requirement. Because the private road application was never formally approved, plaintiffs' proposed land division fell short of compliance with the LDA. Defendant was entitled to withhold its final approval, and the trial court did not err in granting judgment for defendant on this issue.

C. Forty-Five Day Requirement

Plaintiffs claim that, at the very least, a denial or an approval of their application should have been issued within forty-five days. Plaintiffs assert that defendant's refusal to approve or deny their application was contrary to the requirements of the LDA and defendant's own ordinance. Because plaintiffs' application remained noncompliant with the applicable local ordinance, we disagree.

The LDA requires that a municipality approve or disapprove a *completed* land division application within forty-five days. MCL 560.109(1). Similarly, § 6(a) of defendant's Land Division Ordinance No. 94 requires that the township assessor "shall make a final acceptance on the land division within forty-five (45) days of receipt of the application package *conforming to the requirements of this ordinance . . .*" (emphasis added).

Under defendant's ordinance, a land division application is not complete unless a means of access already exists or the accompanying private road plan has already been approved. "The road plan of an applicant must be approved before a land division is approved." Rose Township Land Division Ordinance No. 94, § 7(c). Because the conditions imposed by defendant had not been fully satisfied, defendant never approved plaintiffs' private road application. We find that defendant did not violate the LDA or its own ordinance by refusing to approve or deny plaintiffs' *incomplete* land division application within forty-five days.

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[3] The driveway act is applicable to non-public roadways constructed through private residential subdivisions. See *Smith v Edwards*, 249 Mich App 199, 205-208; 645 NW2d 304 (2002).

D. Constitutional Claims

Plaintiffs also contend that their constitutional rights were violated by defendant's ordinance and actions. However, with regard to the constitutional claims, we find that plaintiffs failed to exhaust their remedies. Further, even if plaintiffs had properly exhausted their remedies, we find that plaintiffs' constitutional rights were not violated.

In general, persons seeking authorization from a governmental unit must exhaust their remedies within that governmental unit before seeking relief in court. *Trojan v Twp of Taylor*, 352 Mich 636, 638-639; 91 NW2d 9 (1958); *Lake Angelo Assoc v Twp of White Lake*, 198 Mich App 65, 74; 498 NW2d 1 (1993). A claim that the application of government regulations affects a taking of property is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue. *Id.* at 70-71, citing *Williamson Co Regional Planning Comm v Hamilton Bank of Johnson City*, 473 US 172; 105 S Ct 3108; 87 L Ed 2d 126 (1985).[4]

Section 8A of defendant's Land Division Ordinance No. 94 provides in relevant part:

> Any person . . . aggrieved by the decision of the Land Division Committee with regard to an application for a proposed land division may appeal such decision within 30 days of said decision to the Township Board . . . . A denial of the appeal by the Township Board shall exhaust all administrative remedies with regard to a proposed land division.

Apparently, plaintiffs did appeal to defendant's Board. However, defendant's Land Division Committee and Board never rendered a final decision regarding the land division application because they considered it to be incomplete.[5] Because plaintiff had never completed the land division application process, which first required approval of plaintiffs' private road application, the township Board necessarily had nothing to review on appeal. We find that plaintiffs failed to exhaust their administrative remedies with regard to the land division application because they did not first pursue applicable administrative remedies with regard to their private road application.

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[4] The Michigan Supreme Court adopted *Williamson* in *Electro-Tech, Inc v H F Campbell Co*, 433 Mich 57, 61; 445 NW2d 61 (1989), and held that before proceeding under 42 USC 1983, a property owner must first obtain a final decision from the particular governmental entity that is alleged to have unconstitutionally taken his property. *Lake Angelo, supra*, extended this finality requirement beyond § 1983 actions to regulatory taking claims, whether framed as a violation of the Fifth Amendment or of the Fourteenth Amendment. *Id*. at 70-71.

[5] Defendant contends that a final appeal should have been taken to its ZBA. However, this assertion is contrary to the language of the ordinance, which provides that the Township Board makes the final decision. The ordinance clearly provides that the Board and ZBA are separate entities. Land Division Ordinance No. 94, §§ (h) and (j). Thus, a question concerning a land division application receives final administrative review by defendant's Board rather than by defendant's ZBA.

Even if plaintiffs had exhausted their remedies with regard to the land division application process, defendant's zoning ordinance does not constitute an unconstitutional taking because it does not deprive plaintiffs of all economically viable use of their land. Nor does the ordinance violate plaintiffs' due-process rights because it advances a legitimate government interest, and is not arbitrary or capricious.

Plaintiffs claim that defendant's zoning ordinance is an unconstitutional taking because it deprives them of a right to use the land. Both the United States Constitution and the Michigan Constitution provide that private property may not be taken by the government without just compensation. US Const, Amdt V; Const 1963, art 10, § 2. A taking can occur through overregulation. *Pennsylvania Coal Co v Mahon*, 260 US 393, 415; 43 S Ct 158; 67 L Ed 322 (1922). As our Supreme Court explained in *K & K Construction Co v DNR*, 456 Mich 570, 585; 575 NW2d 531 (1998),

> a regulatory taking exists when: (1) the regulation fails to advance a legitimate state interest, or (2) the regulation denies an owner economically viable use of his land. This second type of taking is subdivided into: (a) a categorical taking, or (b) a taking recognized on the basis of the application of the traditional balancing test.

A stated purpose of defendant's ordinance is to enable access by emergency vehicles to residential areas. This has specifically been recognized by our Supreme Court as a legitimate governmental interest. *Bevan*, *supra* at 399-400. Therefore, the first type of regulatory taking is not present.

Nor were plaintiffs deprived of economically viable use of their land under either a categorical taking analysis or the traditional balancing test. A categorical taking occurs when a regulation deprives a landowner of "'all economically beneficial or productive use of land.'" *K & K Construction*, *supra* at 586, quoting *Lucas v South Carolina Coastal Council*, 505 US 1003, 1015; 112 S Ct 2886; 120 L Ed 2d 798 (1992). In the instant case, plaintiffs have presented no evidence that their property is not marketable without the land division. Plaintiffs cannot demonstrate a categorical taking.

Under the traditional balancing analysis, courts consider whether an ordinance that does not amount to a categorical taking is nevertheless so burdensome that it constitutes a taking. *K & K Construction*, *supra* at 587. This analysis involves the weighing of three factors: "(1) the character of the government action, (2) the economic effect of the regulation . . . and (3) the extent to which the regulation interfered with distinct investment-backed expectations." *Id.* at 587-588. Under the first factor, a taking typically occurs when the government physically invades the property. See *Penn Central Transportation Co v New York*, 438 US 104, 124; 98 S Ct 2646; 57 L Ed 2d 631 (1978). However, in this case defendant did not physically invade or assert dominion over plaintiffs' land.

Analyzing the economic effect of the regulation is the second factor of the balancing test, and involves "a comparison of the value removed with the value that remains." *Bevan*, *supra* at 391. Here, the record is devoid of any information or arguments regarding a loss in value occasioned by defendant's ordinance. Even assuming that there is such a loss in value, "a mere diminution in property value which results from regulation does not amount to a taking." *Id.* at 402-403, citing *Penn Central*, *supra* at 131. Furthermore, a mere disparity in value between the

zoned use of the property and its most profitable use is not sufficient to support the finding of a taking. *Cohen v Canton Twp*, 38 Mich App 680, 689; 197 NW2d 1001 (1972). Instead, "[t]he owner must show that the property is either unsuitable for use as zoned or unmarketable as zoned." *Bevan*, *supra* at 403, citing *Kirk v Tyrone Twp*, 398 Mich 429, 444; 247 NW2d 848 (1976). Plaintiffs have neither argued nor otherwise shown that their property is unsuitable or unmarketable for residential use.

Finally, plaintiffs have not shown that the plan to subdivide their property was a distinct expectation that led to their decision to buy the land. Therefore, plaintiffs have failed to satisfy the third factor, which concerns interference with distinct investment-backed expectations. Plaintiffs' claim that defendant's zoning ordinance has effected an unconstitutional regulatory taking must fail.

Next, plaintiffs claim that defendant's ordinance violates their substantive due-process rights. To prevail on a substantive due-process challenge to a zoning ordinance, a plaintiff must establish either:

> (1) that there is no reasonable governmental interest being advanced by the present zoning classification or (2) that an ordinance is unreasonable because of the purely arbitrary, capricious, and unfounded exclusion of other types of legitimate land use from the area in question. [*Frericks v Highland Twp*, 228 Mich App 575, 594; 579 NW2d 441 (1998).]

As already discussed, one of defendant's purposes in requiring roadway access to all newly created lots is to ensure appropriate ingress and egress for emergency vehicles. Our Supreme Court has specifically indicated that such a purpose is reasonable and constitutes a legitimate governmental interest. *Bevan*, *supra* at 399-400. Plaintiffs' substantive due-process challenge to defendant's ordinance is unavailing. Even assuming that the proper administrative remedies were exhausted, we find no constitutional error.

E. Compliance with the April 2002 Resolution

Plaintiffs contend that they were in compliance with defendant's April 2002 resolution, or, at the very least, that there was a question fact concerning whether they were in compliance. According to plaintiffs, defendant's supervisor admitted that plaintiffs had met all ordinance and LDA conditions. However, this is a misstatement. The supervisor only conceded that plaintiffs' private road met certain applicable standards. He did not concede that the private road satisfied all other conditions. Indeed, the road failed to meet other requirements because it was not paved and exceeded the allowable length. Nor did plaintiffs seek a waiver of these requirements from defendant. In addition, the April 2002 resolution specifically required execution of certain documents and deed restrictions by "all interested parties." Nonetheless, the parties to whom plaintiffs had already sold certain interests in the property failed to execute any such documents. The conditions created by the April 2002 resolution were not fully met. Defendant was therefore entitled to withhold its approval of plaintiffs' private road application.

II

Plaintiffs next argue that the trial court abused its discretion in denying their motion to compel discovery, for adjournment, and for leave to file a second amended complaint. We disagree.

A. Standard of Review

A trial court's decision to grant or deny discovery is reviewed for an abuse of discretion. *Mercy Mt Clemens Corp v Auto Club Ins Ass'n*, 219 Mich App 46, 50-51; 555 NW2d 871 (1996). A trial court's ruling with respect to a motion for an adjournment is also reviewed for an abuse of discretion. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). A request for an adjournment must be based on good cause, and the trial court may grant a motion to adjourn if it would promote the cause of justice. *Id.* The grant or denial of leave to amend the pleadings is also reviewed for an abuse of discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997).

B. Trial Court Denial of Plaintiffs' Motions

Plaintiffs argue that the trial court's July 2002 order denying their motion to compel discovery was error. In June 2002, plaintiffs filed motion to compel discovery. The trial court entered an order denying plaintiffs' motion without prejudice, requiring that the parties resolve the discovery problems or have the issues submitted to a discovery master. Michigan follows an open, broad discovery policy that permits liberal discovery of any non-privileged material that is relevant to the pending case. MCR 2.302(B)(1); *Domako v Rowe*, 438 Mich 347, 353, 359; 475 NW2d 30 (1991). Because the purpose of discovery is to simplify and clarify issues, the rules should be construed in an effort to facilitate trial preparation and to further the ends of justice. *Id.* at 360; *Eyde v Eyde*, 172 Mich App 49, 54; 431 NW2d 459 (1988).

The trial court's denial was without prejudice, providing that the issue of deposing certain township officials would be "frozen" pending resolution of the discovery issues. A discovery master was then appointed. There were complicated discovery issues in this case, and the trial court thought these would best be addressed by a discovery master. In addition, defendant's officials were deposed at length in the parallel *Bayagich* litigation, and plaintiffs in this case had access to the depositions taken in that matter. The trial court denied the motion to compel in an effort to facilitate trial and provide adequate review of the discovery issues. This was not an abuse of discretion.[6]

Plaintiffs next contend that the trial court abused its discretion in denying their motion for a second adjournment. Plaintiffs have not properly presented this matter for review. Plaintiffs

[6] Further, plaintiffs asserted that they did not receive all materials relating to defendant's treatment of their land division application. However, during the deposition of one of defendant's officials, plaintiffs' counsel acknowledged that he had access to this information.

merely state that the trial court abused its discretion in denying their motion to adjourn. However, plaintiffs have provided no legal authority in support of their position. An appellant may not merely announce its position and leave it to this Court to discover and rationalize the basis for its claims. *Ambs v Kalamazoo County Road Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003). Nor may he give issues cursory treatment with little or no citation of supporting authority. *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). Plaintiffs' failure to properly address this issue constitutes abandonment of the issue on appeal. *Yee v Shiawassee County Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

In August 2004, plaintiffs filed an additional motion to compel discovery, requesting that the trial court compel defendant to completely answer interrogatories, and set deposition dates for certain of defendant's officials. In September 2004, plaintiffs filed a motion for leave to file a second amended complaint, contending that they should be allowed to amend because certain additional legal issues had been revealed through discovery. In October 2004, the trial court entered an order denying both motions.

The trial court did not abuse its discretion in denying the motion to compel discovery. By October 2004, discovery had been closed for more than eighteen months, and there had already been significant delays and continuances in the discovery process. Nor did the trial court abuse its discretion in denying the motion for leave to file a second amended complaint. The rules pertaining to the amendment of pleadings are designed to facilitate amendment, except when prejudice to the opposing party would result. *Ben P Fyke & Sons v Gunter Co*, 390 Mich 649, 659; 213 NW2d 134 (1973). A motion to amend should ordinarily be denied only for particularized reasons, including undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the defendant, or futility. *Id*.; *Weymers, supra* at 658.

Plaintiffs filed their initial complaint in August 2001, and their first amended complaint in November 2001. Plaintiffs then filed their motion for leave to file a second amended complaint in August 2004. A hearing was conducted and plaintiffs' counsel explained that the motion for leave to file a second amended complaint was intended

> primarily to clean up the facts of the case that we have learned subsequent to the filling . . . . It's my view that the causes of action that were pled in the original complaint do not, are not being materially changed . . . . [W]e're not materially changing the causes of action . . . . All of these issues, your Honor, were raised, if not specifically, but in form both in the complaint that's already been on file . . . they've been litigated throughout.

Plaintiff's August 2004 motion was fraught with undue delay, as it was filed approximately three years after the first complaint. See *Weymers, supra*. In addition, plaintiffs' counsel admitted that the motion was intended only to elaborate on facts already enumerated in the earlier pleadings. Thus, the stated purpose of "clean[ing] up" the complaint would essentially have been an exercise in futility. The trial court properly denied the motion for leave to amend.

III

Next, plaintiffs contend that the trial court erred when it denied their motion for injunctive relief and mandamus to compel the issuance of sidwell numbers.[7] Again, we disagree.

A. Standard of Review

The grant or denial of a preliminary injunction is within the sound discretion of the trial court, and will not be reversed on appeal absent an abuse of that discretion. *Michigan Coalition of State Employee Unions v Civil Service Comm*, 465 Mich 212, 217; 634 NW2d 692 (2001). A trial court's decision whether to issue a writ of mandamus is reviewed for an abuse of discretion, *Baraga County v State Tax Commission*, 466 Mich 264, 269; 645 NW2d 13 (2002), but an underlying issue of statutory interpretation is reviewed de novo, *In re MCI Telecommunications Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999).

B. Preliminary Injunction and Mandamus

The purpose of a preliminary injunction is to preserve the status quo pending a final hearing so that the rights of the parties can be determined without injury to either. *Pharmaceutical Research & Manufacturers of America v Dep't of Community Health*, 254 Mich App 397, 402; 657 NW2d 162 (2002). The status quo to be preserved by a preliminary injunction is the last actual, peaceable, noncontested status that preceded the pending controversy. *Fancy v Egrin*, 177 Mich App 714, 720; 442 NW2d 765 (1989). Here, plaintiffs did not seek to preserve the status quo, but rather sought to compel defendant to issue sidwell numbers. Thus, a preliminary injunction was not the proper remedy.

Mandamus is a writ issued by a court of superior jurisdiction to compel a public officer or agency to perform a clear legal duty. *Jones v Dep't of Corrections*, 468 Mich 646, 658; 664 NW2d 717 (2003). Mandamus is an extraordinary remedy, available only when no other relief would be adequate. *Genesis Center, PLC v Commissioner of Fin and Ins Services*, 246 Mich App 531, 546; 633 NW2d 834 (2001). To obtain a writ of mandamus, a plaintiff must have a clear legal right to the performance of the specific duty sought to be compelled, and the defendant must have a clear legal duty to perform the act. *Casco Twp v Secretary of State*, 472 Mich 566, 577; 701 NW2d 102 (2005); *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2004). The burden of proving entitlement to a writ of mandamus is on the plaintiff. *Id.*

As already discussed, plaintiffs failed to satisfy the LDA requirements before submitting their land division application. Defendant was not required to act on the land division application until the private road application reached final approval. Thus, under the LDA, defendant did not have a clear legal duty to approve plaintiffs' incomplete land division

[7] A sidwell number, also known as a tax identification number or parcel identification number, is required for a parcel's legal description.

application. *Casco Twp, supra* at 577. Plaintiffs were not entitled to mandamus relief on the facts of this case.

To the extent plaintiffs argue that sidwell numbers should have been issued for other reasons, they have not properly presented their arguments to this Court. Plaintiffs have cited no legal authority in support of these alternative arguments. Plaintiffs may not merely announce their position and leave it to this Court to discover and rationalize a basis for their claims, *Ambs, supra* at 650, nor may they give issues cursory treatment with little or no citation of supporting authority, *Silver Creek Twp, supra* at 99. Plaintiffs' failure to address the merits of these additional arguments constitutes an abandonment of the issues on appeal. *Yee, supra* at 406.

IV

Plaintiffs lastly contend that the trial court erred when it set aside the default judgment entered against defendant. We disagree.

A. Standard of Review

We review for an abuse of discretion a trial court's decision whether to enter or set aside a default judgment. See *Alken-Ziegler v Waterbury Headers Corp*, 461 Mich 219, 223; 600 NW2d 638 (1999). "An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

B. Default Judgment

Although the law favors disposition of claims on the merits, the policy of this state is generally against setting aside defaults and default judgments that have been properly entered. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). Except when grounded on lack of jurisdiction over the defendant, a motion to set aside a default or a default judgment generally may be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. *Alken-Ziegler, supra* at 223. Whether a party has made a sufficient showing of good cause and a meritorious defense are discrete inquiries, but the strength of a proffered meritorious defense can affect the necessary showing of good cause. *Id.* at 232-233. Good cause sufficient to warrant setting aside a default judgment may be shown by (1) a substantial procedural defect or irregularity, or (2) a reasonable excuse for the failure to comply with requirements which created the default. *Id.* at 233.

Settlement discussions began soon after plaintiffs filed their complaint, but defendant failed to file an answer. Thus, in November 2001, a default judgment was entered against defendant. Defendant filed a motion to set aside the default, claiming that counsel was still discussing potential settlement and had agreed to extend the time for filing an answer. Plaintiffs filed a response, admitting that discussions had occurred, but asserting that they had never agreed to a time extension. Plaintiffs' counsel submitted an affidavit, averring that defendant had not requested a time extension, either orally or in writing.

At the hearing, defendant's counsel stated that he had called plaintiffs' counsel two days after the complaint was filed, asking if the parties could continue settlement discussions. Defendant's counsel indicated that he also asked for a time extension for filing an answer. According to defense counsel, plaintiffs' attorney agreed to these requests. Defense counsel claimed that the last discussions were held on November 26, 2001, at which time a consent judgment was discussed. However, according to defense counsel, plaintiffs moved for a default judgment the very next day.

The trial court asked plaintiffs' counsel whether he had met with defense counsel on the day before the default judgment was filed. Plaintiffs' counsel acknowledged that he had. The trial court was appalled by the behavior of plaintiffs' counsel in this regard. The court set aside the default judgment, indicating that good cause existed because settlement discussions were still ongoing. Moreover, by averring that plaintiffs had not exhausted their remedies or complied with defendant's ordinance, defendant's affidavit supported the existence of a meritorious defense. In light of these facts, we cannot say that the trial court abused its discretion in setting aside the default judgment.

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Jane E. Markey